

# Senate Amendment 3219

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1 1 Amend House File 619, as amended, passed, and  
1 2 reprinted by the House, as follows:  
1 3 #1. By striking everything after the enacting  
1 4 clause and inserting the following:  
1 5 <DIVISION I  
1 6 DNA PROFILING  
1 7 Section 1. NEW SECTION. 81.1 DEFINITIONS.  
1 8 As used in this chapter, unless the context  
1 9 otherwise requires:  
1 10 1. "DNA" means deoxyribonucleic acid.  
1 11 2. "DNA databank" means the repository for DNA  
1 12 samples obtained pursuant to section 81.4.  
1 13 3. "DNA database" means the collection of DNA  
1 14 profiles and DNA records.  
1 15 4. "DNA profile" means the objective form of the  
1 16 results of DNA analysis performed on a DNA sample.  
1 17 The results of all DNA identification analysis on an  
1 18 individual's DNA sample are also collectively referred  
1 19 to as the DNA profile of an individual.  
1 20 5. "DNA profiling" means the procedure established  
1 21 by the division of criminal investigation, department  
1 22 of public safety, for determining a person's genetic  
1 23 identity.  
1 24 6. "DNA record" means the DNA sample and DNA  
1 25 profile, and other records in the DNA database and DNA  
1 26 data bank used to identify a person.  
1 27 7. "DNA sample" means a biological sample provided  
1 28 by any person required to submit a DNA sample or a DNA  
1 29 sample submitted for any other purpose under section  
1 30 81.4.  
1 31 8. "Person required to submit a DNA sample" means  
1 32 a person convicted, adjudicated delinquent, receiving  
1 33 a deferred judgment, or found not guilty by reason of  
1 34 insanity of an offense requiring DNA profiling  
1 35 pursuant to section 81.2. "Person required to submit  
1 36 a DNA sample" also means a person determined to be a  
1 37 sexually violent predator pursuant to section 229A.7.  
1 38 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO  
1 39 SUBMIT A DNA SAMPLE.  
1 40 1. A person who receives a deferred judgment for a  
1 41 felony or against whom a judgment or conviction for a  
1 42 felony has been entered shall be required to submit a  
1 43 DNA sample for DNA profiling pursuant to section 81.4.  
1 44 2. A person determined to be a sexually violent  
1 45 predator pursuant to chapter 229A shall be required to  
1 46 submit a DNA sample for DNA profiling pursuant to  
1 47 section 81.4 prior to discharge or placement in a  
1 48 transitional release program.  
1 49 3. A person found not guilty by reason of insanity  
1 50 of an offense that requires DNA profiling shall be  
2 1 required to submit a DNA sample for DNA profiling  
2 2 pursuant to section 81.4 as part of the person's  
2 3 treatment management program.  
2 4 4. A juvenile adjudicated delinquent of an offense  
2 5 that requires DNA profiling of an adult offender shall  
2 6 be required to submit a DNA sample for DNA profiling  
2 7 pursuant to section 81.4 as part of the disposition of  
2 8 the juvenile's case.  
2 9 5. An offender placed on probation shall  
2 10 immediately report to the judicial district department  
2 11 of correctional services after sentencing so it can be  
2 12 determined if the offender has been convicted of an  
2 13 offense requiring DNA profiling. If it is determined  
2 14 by the judicial district that DNA profiling is  
2 15 required, the offender shall immediately submit a DNA  
2 16 sample.  
2 17 6. A person required to register as a sex  
2 18 offender.  
2 19 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA  
2 20 DATABASE AND DNA DATABANK.  
2 21 1. A state DNA database and a state DNA databank  
2 22 are established under the control of the division of  
2 23 criminal investigation, department of public safety.  
2 24 The division of criminal investigation shall conduct

2 25 DNA profiling of a DNA sample submitted in accordance  
2 26 with this section.

2 27 2. A DNA sample shall be submitted, and the  
2 28 division of criminal investigation shall store and  
2 29 maintain DNA records in the DNA database and DNA  
2 30 databank for persons required to submit a DNA sample.

2 31 3. A DNA sample may be submitted, and the division  
2 32 of criminal investigation shall store and maintain DNA  
2 33 records in the DNA database and DNA databank for any  
2 34 of the following:

2 35 a. Crime scene evidence and forensic casework.

2 36 b. A relative of a missing person.

2 37 c. An anonymous DNA profile used for forensic  
2 38 validation, forensic protocol development, or quality  
2 39 control purposes, or for the establishment of a  
2 40 population statistics database.

2 41 4. A fingerprint record of a person required to  
2 42 submit a DNA sample shall also be submitted to the  
2 43 division of criminal investigation with the DNA sample  
2 44 to verify the identity of the person required to  
2 45 submit a DNA sample.

2 46 Sec. 4. NEW SECTION. 81.4 COLLECTING,  
2 47 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA  
2 48 SAMPLES AND DNA RECORDS.

2 49 1. The division of criminal investigation shall  
2 50 adopt rules for the collection, submission, analysis,  
3 1 identification, storage, and disposition of DNA  
3 2 records.

3 3 2. A supervising agency having control, custody,  
3 4 or jurisdiction over a person shall collect a DNA  
3 5 sample from a person required to submit a DNA sample.  
3 6 The supervising agency shall collect a DNA sample,  
3 7 upon admittance to the pertinent institution or  
3 8 facility, of the person required to submit a DNA  
3 9 sample or at a determined date and time set by the  
3 10 supervising agency. If a person required to submit a  
3 11 DNA sample is confined at the time a DNA sample is  
3 12 required, the person shall submit a DNA sample as soon  
3 13 as practicable. If a person required to submit a DNA  
3 14 sample is not confined after the person is required to  
3 15 submit a DNA sample, the supervising agency shall  
3 16 determine the date and time to collect the DNA sample.

3 17 3. A person required to submit a DNA sample who  
3 18 refuses to submit a DNA sample may be subject to  
3 19 contempt proceedings pursuant to chapter 665 until the  
3 20 DNA sample is submitted.

3 21 4. The division of criminal investigation shall  
3 22 conduct DNA profiling on a DNA sample or may contract  
3 23 with a private entity to conduct the DNA profiling.

3 24 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL  
3 25 LIABILITY == LIMITATION.

3 26 A person who collects a DNA sample shall not be  
3 27 civilly or criminally liable for the collection of the  
3 28 DNA sample if the person performs the person's duties  
3 29 in good faith and in a reasonable manner according to  
3 30 generally accepted medical practices or in accordance  
3 31 with the procedures set out in the administrative  
3 32 rules of the department of public safety adopted  
3 33 pursuant to section 81.4.

3 34 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

3 35 1. A person who knowingly or intentionally does  
3 36 any of the following commits an aggravated  
3 37 misdemeanor:

3 38 a. Discloses any part of a DNA record to a person  
3 39 or agency that is not authorized by the division of  
3 40 criminal investigation to have access to the DNA  
3 41 record.

3 42 b. Uses or obtains a DNA record for a purpose  
3 43 other than what is authorized under this chapter.

3 44 2. A person who knowingly or intentionally alters  
3 45 or attempts to alter a DNA sample, falsifies the  
3 46 source of a DNA sample, or materially alters a  
3 47 collection container used to collect the DNA sample,  
3 48 commits a class "D" felony.

3 49 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST  
3 50 NOT INVALIDATED.

4 1 The detention, arrest, or conviction of a person  
4 2 based upon a DNA database match is not invalidated if  
4 3 it is determined that the DNA sample or DNA profile  
4 4 was obtained or placed into the DNA database by  
4 5 mistake or error.

4 6 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

4 7 1. A DNA record shall be considered a confidential  
4 8 record and disclosure of a DNA record is only  
4 9 authorized pursuant to this section.

4 10 2. Confidential DNA records under this section may  
4 11 be released to the following agencies for law  
4 12 enforcement identification purposes:

4 13 a. Any criminal or juvenile justice agency as  
4 14 defined in section 692.1.

4 15 b. Any criminal or juvenile justice agency in  
4 16 another jurisdiction that meets the definition of a  
4 17 criminal or juvenile justice agency as defined in  
4 18 section 692.1.

4 19 3. The division of criminal investigation shall  
4 20 share the DNA record information with the appropriate  
4 21 federal agencies for use in a national DNA database.

4 22 4. A DNA record or other forensic information  
4 23 developed pursuant to this chapter may be released for  
4 24 use in a criminal or juvenile delinquency proceeding  
4 25 in which the state is a party and where the DNA record  
4 26 or forensic information is relevant and material to  
4 27 the subject of the proceeding. Such a record or  
4 28 information may become part of a public transcript or  
4 29 other public recording of such a proceeding.

4 30 5. A DNA record or other forensic information may  
4 31 be released pursuant to a court order for criminal  
4 32 defense purposes to a defendant, who shall have access  
4 33 to DNA samples and DNA profiles related to the case in  
4 34 which the defendant is charged.

4 35 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA  
4 36 RECORDS.

4 37 1. A person whose DNA record has been included in  
4 38 the DNA database or DNA databank established pursuant  
4 39 to section 81.3 may request, in writing to the  
4 40 division of criminal investigation, expungement of the  
4 41 DNA record from the DNA database and DNA databank  
4 42 based upon the person's conviction, adjudication, or  
4 43 civil commitment which caused the submission of the  
4 44 DNA sample being reversed on appeal and the case  
4 45 dismissed. The written request shall contain a  
4 46 certified copy of the final court order reversing the  
4 47 conviction, adjudication, or civil commitment, and a  
4 48 certified copy of the dismissal, and any other  
4 49 information necessary to ascertain the validity of the  
4 50 request.

5 1 2. The division of criminal investigation, upon  
5 2 receipt of a written request that validates reversal  
5 3 on appeal of a person's conviction, adjudication, or  
5 4 commitment, and subsequent dismissal of the case, or  
5 5 upon receipt of a written request by a person who  
5 6 voluntarily submitted a DNA sample under section 81.3,  
5 7 subsection 3, paragraph "b", or upon receipt of a  
5 8 written request by a person who voluntarily submitted  
5 9 a DNA sample pursuant to section 81.3, subsection 3,  
5 10 paragraph "b", shall expunge all of the DNA records  
5 11 and identifiable information of the person in the DNA  
5 12 database and DNA databank. However, if the division  
5 13 of criminal investigation determines that the person  
5 14 is otherwise obligated to submit a DNA sample, the DNA  
5 15 records shall not be expunged. If the division of  
5 16 criminal investigation denies an expungement request,  
5 17 the division shall notify the person requesting the  
5 18 expungement of the decision not to expunge the DNA  
5 19 record and the reason supporting its decision. The  
5 20 division of criminal investigation decision is subject  
5 21 to judicial review pursuant to chapter 17A. The  
5 22 department of public safety shall adopt rules  
5 23 governing the expungement procedure and a review  
5 24 process.

5 25 3. The division of criminal investigation is not  
5 26 required to expunge or destroy a DNA record pursuant  
5 27 to this section, if expungement or destruction of the  
5 28 DNA record would destroy evidence related to another  
5 29 person.

5 30 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER  
5 31 CONVICTION.

5 32 1. A defendant who has been convicted of a felony  
5 33 and who has not been required to submit a DNA sample  
5 34 for DNA profiling may make a motion to the court for  
5 35 an order to require that DNA analysis be performed on  
5 36 evidence collected in the case for which the person

5 37 stands convicted.

5 38 2. The motion shall state the following:

5 39 a. The specific crimes for which the defendant

5 40 stands convicted in this case.

5 41 b. The facts of the underlying case, as proven at

5 42 trial or admitted to during a guilty plea proceeding.

5 43 c. Whether any of the charges include sexual abuse

5 44 or involve sexual assault, and if so, whether a sexual

5 45 assault examination was conducted and evidence

5 46 preserved, if known.

5 47 d. Whether identity was at issue or contested by

5 48 the defendant.

5 49 e. Whether the defendant offered an alibi, and if

5 50 so, testimony corroborating the alibi and, from whom.

6 1 f. Whether eyewitness testimony was offered, and

6 2 if so from whom.

6 3 g. Whether any issues of police or prosecutor

6 4 misconduct have been raised in the past or are being

6 5 raised by the motion.

6 6 h. The type of inculpatory evidence admitted into

6 7 evidence at trial or admitted to during a guilty plea

6 8 proceeding.

6 9 i. Whether blood testing or other biological

6 10 evidence testing was conducted previously in

6 11 connection with the case and, if so, by whom and to

6 12 the result, if known.

6 13 j. What biological evidence exists and, if known,

6 14 the agency or laboratory storing the evidence that the

6 15 defendant seeks to have tested.

6 16 k. Why the requested analysis of DNA evidence is

6 17 material to the issue in the case and not merely

6 18 cumulative or impeaching.

6 19 l. Why the DNA evidence would have changed the

6 20 outcome of the trial or invalidated a guilty plea if

6 21 DNA profiling had been conducted prior to the

6 22 conviction.

6 23 3. A motion filed under this section shall be

6 24 filed in the county where the defendant was convicted,

6 25 and notice of the motion shall be served by certified

6 26 mail upon the county attorney and, if known, upon the

6 27 state, local agency, or laboratory holding evidence

6 28 described in subsection 2, paragraph "k". The county

6 29 attorney shall have sixty days to file an answer to

6 30 the motion.

6 31 4. Any DNA profiling of the defendant or other

6 32 biological evidence testing conducted by the state or

6 33 by the defendant shall be disclosed and the results of

6 34 such profiling or testing described in the motion or

6 35 answer.

6 36 5. If the evidence requested to be tested was

6 37 previously subjected to DNA or other biological

6 38 analysis by either party, the court may order the

6 39 disclosure of the results of such testing, including

6 40 laboratory reports, notes, and underlying data, to the

6 41 court and the parties.

6 42 6. The court may order a hearing on the motion to

6 43 determine if evidence should be subjected to DNA

6 44 analysis.

6 45 7. The court shall grant the motion if all of the

6 46 following apply:

6 47 a. The evidence subject to DNA testing is

6 48 available and in a condition that will permit

6 49 analysis.

6 50 b. A sufficient chain of custody has been

7 1 established for the evidence.

7 2 c. The identity of the person who committed the

7 3 crime for which the defendant was convicted was a

7 4 significant issue in the crime for which the defendant

7 5 was convicted.

7 6 d. The evidence subject to DNA analysis is

7 7 material to, and not merely cumulative or impeaching

7 8 of, evidence included in the trial record or admitted

7 9 to at a guilty plea proceeding.

7 10 e. DNA analysis of the evidence would raise a

7 11 reasonable probability that the defendant would not

7 12 have been convicted if DNA profiling had been

7 13 available at the time of the conviction and had been

7 14 conducted prior to the conviction.

7 15 8. Upon the court granting a motion filed pursuant

7 16 to this section, DNA analysis of evidence shall be

7 17 conducted within the guidelines generally accepted by

7 18 the scientific community. The defendant shall provide  
7 19 DNA samples for testing if requested by the state.

7 20 9. Results of DNA analysis conducted pursuant to  
7 21 this section shall be reported to the parties and to  
7 22 the court and may be provided to the board of parole,  
7 23 department of corrections, and criminal and juvenile  
7 24 justice agencies, as defined in section 692.1, for use  
7 25 in the course of investigations and prosecutions, and  
7 26 for consideration in connection with requests for  
7 27 parole, pardon, reprieve, and commutation. DNA  
7 28 samples obtained pursuant to this section may be  
7 29 included in the DNA databank, and DNA profiles and DNA  
7 30 records developed pursuant to this section may be  
7 31 included in the DNA database.

7 32 10. A criminal or juvenile justice agency, as  
7 33 defined in section 692.1, shall maintain DNA samples  
7 34 and evidence that could be tested for DNA for a period  
7 35 of three years beyond the limitations for the  
7 36 commencement of criminal actions as set forth in  
7 37 chapter 802. This section does not create a cause of  
7 38 action for damages or a presumption of spoliation in  
7 39 the event evidence is no longer available for testing.

7 40 11. If the court determines a defendant who files  
7 41 a motion under this section is indigent, the defendant  
7 42 shall be entitled to appointment of counsel as  
7 43 provided in chapter 815.

7 44 12. If the court determines after DNA analysis  
7 45 ordered pursuant to this section that the results  
7 46 indicate conclusively that the DNA profile of the  
7 47 defendant matches the profile from the analyzed  
7 48 evidence used against the defendant, the court may  
7 49 order the defendant to pay the costs of these  
7 50 proceedings, including costs of all testing, court  
8 1 costs, and costs of court-appointed counsel, if any.

8 2 Sec. 11. Section 229A.7, Code 2005, is amended by  
8 3 adding the following new subsection:

8 4 NEW SUBSECTION. 5A. If the court or jury  
8 5 determines that the respondent is a sexually violent  
8 6 predator, the court shall order the respondent to  
8 7 submit a DNA sample for DNA profiling pursuant to  
8 8 section 81.4.

8 9 Sec. 12. Section 232.52, Code 2005, is amended by  
8 10 adding the following new subsection:

8 11 NEW SUBSECTION. 10. The court shall order a  
8 12 juvenile adjudicated a delinquent for an offense that  
8 13 requires DNA profiling under section 81.2 to submit a  
8 14 DNA sample for DNA profiling pursuant to section 81.4.

8 15 Sec. 13. Section 669.14, Code 2005, is amended by  
8 16 adding the following new subsection:

8 17 NEW SUBSECTION. 15. Any claim arising from or  
8 18 related to the collection of a DNA sample for DNA  
8 19 profiling pursuant to section 81.4 or a DNA profiling  
8 20 procedure performed by the division of criminal  
8 21 investigation, department of public safety.

8 22 Sec. 14. Section 901.5, subsection 8A, Code 2005,  
8 23 is amended to read as follows:

8 24 8A. a. The court shall order DNA profiling of a  
8 25 defendant convicted of an offense that requires  
8 26 profiling under section ~~13.10~~ 81.2.

8 27 b. Notwithstanding section ~~13.10~~ 81.2, the court  
8 28 may order the defendant to provide a ~~physical specimen~~  
8 29 DNA sample to be submitted for DNA profiling if  
8 30 appropriate. In determining the appropriateness of  
8 31 ordering DNA profiling, the court shall consider the  
8 32 deterrent effect of DNA profiling, the likelihood of  
8 33 repeated offenses by the defendant, and the  
8 34 seriousness of the offense.

8 35 Sec. 15. Section 906.4, unnumbered paragraph 3,  
8 36 Code 2005, is amended to read as follows:

8 37 ~~Notwithstanding section 13.10, the~~ The board may  
8 38 order the defendant to provide a physical specimen to  
8 39 be submitted for DNA profiling as a condition of  
8 40 parole or work release, if ~~appropriate~~ a DNA profile  
8 41 has not been previously conducted pursuant to chapter

8 42 81. In determining the appropriateness of ordering  
8 43 DNA profiling, the board shall consider the deterrent  
8 44 effect of DNA profiling, the likelihood of repeated  
8 45 offenses by the defendant, and the seriousness of the  
8 46 offense.

8 47 Sec. 16. 2002 Iowa Acts, chapter 1080, is  
8 48 repealed.

8 49 Sec. 17. Section 13.10, Code 2005, is repealed.  
8 50 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE  
9 1 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.  
9 2 A person convicted, adjudicated a delinquent, civilly  
9 3 committed as a sexually violent predator, or found not  
9 4 guilty by reason of insanity, prior to the effective  
9 5 date of this Act, who would otherwise be required to  
9 6 submit a DNA sample under this Act, and who is under  
9 7 the custody, control, or jurisdiction of a supervising  
9 8 agency, shall submit a DNA sample prior to being  
9 9 released from the supervising agency's custody,  
9 10 control, or jurisdiction.

9 11 Sec. 19. EFFECTIVE DATE. This division of this  
9 12 Act, being deemed of immediate importance, takes  
9 13 effect upon enactment.

9 14 DIVISION II  
9 15 SEX OFFENDER REGISTRY AND TREATMENT

9 16 Sec. 20. Section 692A.1, subsection 8, Code 2005,  
9 17 is amended to read as follows:

9 18 8. "Residence" means the place where a person  
9 19 sleeps, which may include more than one location, and  
9 20 may be mobile or transitory, including a shelter or  
9 21 group home.

9 22 Sec. 21. Section 692A.2, Code 2005, is amended by  
9 23 adding the following new subsection:

9 24 NEW SUBSECTION. 1A. If a person is required to  
9 25 register for a period of ten years under subsection 1  
9 26 and the period under subsection 1 has expired, the  
9 27 person shall be required to remain on the registry if  
9 28 the person has been sentenced to a special sentence as  
9 29 required under section 903B.0A or 903B.0B, for a  
9 30 period equal to the term of the special sentence.

9 31 Sec. 22. Section 692A.4, Code 2005, is amended to  
9 32 read as follows:

9 33 692A.4 VERIFICATION OF ADDRESS AND TAKING OF  
9 34 PHOTOGRAPH.

9 35 1. The address of a person required to register  
9 36 under this chapter shall be verified annually as  
9 37 follows:

9 38 a. On a date which falls within the month in which  
9 39 the person was initially required to register, the  
9 40 department shall mail a verification form to the last  
9 41 reported address of the person. Verification forms  
9 42 shall not be forwarded to the person who is required  
9 43 to register under this chapter if the person no longer  
9 44 resides at the address, but shall be returned to the  
9 45 department.

9 46 b. The person shall complete and mail the  
9 47 verification to the department within ten days of  
9 48 receipt of the form.

9 49 c. The verification form shall be signed by the  
9 50 person, and state the address at which the person  
10 1 resides. If the person is in the process of changing  
10 2 residences, the person shall state that fact as well  
10 3 as the old and new addresses or places of residence.

10 4 2. Verification of address for a person who has  
10 5 been convicted of an offense under the laws of this  
10 6 state or of another state which would qualify the  
10 7 person as a sexually violent predator shall be  
10 8 accomplished in the same manner as in subsection 1,  
10 9 except that the verification shall be done every three  
10 10 months at times established by the department.

10 11 3. A photograph of a person required to register  
10 12 under this chapter shall be updated, at a minimum,  
10 13 annually. When the department mails the address  
10 14 verification notice in subsection 1, the department  
10 15 shall also enclose a form informing the person to  
10 16 annually submit to being photographed by the sheriff  
10 17 of the county of the person's residence within ten  
10 18 days of receipt of the address verification form. The  
10 19 sheriff shall send the updated photograph to the  
10 20 department within ten days of the photograph being  
10 21 taken and the department shall post the updated  
10 22 photograph on the sex offender registry's web page.  
10 23 The sheriff may require the person to submit to being  
10 24 photographed by the sheriff more than once a year by  
10 25 mailing another notice informing the person to submit  
10 26 to being photographed.

10 27 Sec. 23. NEW SECTION. 692A.4A ELECTRONIC  
10 28 MONITORING.

10 29 A person required to register under this chapter

10 30 who is placed on probation, parole, work release,  
10 31 special sentence, or any other type of conditional  
10 32 release, may be supervised by an electronic tracking  
10 33 and monitoring system in addition to any other  
10 34 conditions of supervision.

10 35 Sec. 24. Section 692A.5, subsection 1, Code 2005,  
10 36 is amended by adding the following new paragraph:

10 37 NEW PARAGRAPH. i. Inform the person that the  
10 38 person must, at a minimum, annually submit to being  
10 39 photographed by the sheriff of the county of the  
10 40 person's residence.

10 41 Sec. 25. Section 692A.13, subsection 3, Code 2005,  
10 42 is amended to read as follows:

10 43 3. Any member of the public may contact a county  
10 44 sheriff's office or police department to request  
10 45 relevant information from the registry regarding a  
10 46 specific person required to register under this  
10 47 chapter. ~~The request for information shall be in~~

~~10 48 writing, and A person making a request for relevant~~  
~~10 49 information may make the request by telephone, in~~  
~~10 50 writing, or in person, and the request shall include~~

11 1 the name of the person and at least one of the  
11 2 following identifiers pertaining to the person about  
11 3 whom the information is sought:

- 11 4 a. The date of birth of the person.
- 11 5 b. The social security number of the person.
- 11 6 c. The address of the person.

11 7 A county sheriff or police department shall not  
11 8 charge a fee relating to a request for relevant  
11 9 information.

11 10 Sec. 26. Section 692A.13, subsection 2, paragraph  
11 11 b, Code 2005, is amended to read as follows:

11 12 b. The general public, including public and  
11 13 private agencies, organizations, public places, ~~public~~  
~~11 14 and private schools,~~ child care facilities, religious  
11 15 and youth organizations, neighbors, neighborhood  
11 16 associations, community meetings, and employers.

11 17 Registry information may be distributed to the public  
11 18 through printed materials, visual or audio press  
11 19 releases, radio communications, or through a criminal  
11 20 or juvenile justice agency's web page.

11 21 Sec. 27. Section 692A.13, Code 2005, is amended by  
11 22 adding the following new subsection:

11 23 NEW SUBSECTION. 2A. When a person required to  
11 24 register under this chapter moves into a school  
11 25 district or moves within a school district, the county  
11 26 sheriff of the county of the person's new residence  
11 27 shall provide relevant information from the sex  
11 28 offender registry to the administrative office of the  
11 29 school district in which the person required to  
11 30 register resides, and shall also provide relevant  
11 31 information to any private school near the person's  
11 32 residence.

11 33 Sec. 28. Section 692A.13, subsection 5, Code 2005,  
11 34 is amended to read as follows:

11 35 5. Relevant information provided to the general  
11 36 public may include the offender's name, address, a  
11 37 photograph, locations frequented by the offender,  
11 38 relevant criminal history information from the  
11 39 registry, and any other relevant information.

11 40 Relevant information provided to the public shall not  
11 41 include the identity of any victim. For purposes of  
~~11 42 inclusion in the sex offender registry's web page or~~  
~~11 43 dissemination to the general public, a conviction for~~  
~~11 44 incest shall be disclosed as either a violation of~~  
~~11 45 section 709.4 or 709.8.~~

11 46 Sec. 29. Section 903A.2, subsection 1, paragraph  
11 47 a, Code 2005, is amended to read as follows:

11 48 a. Category "A" sentences are those sentences  
11 49 which are not subject to a maximum accumulation of  
11 50 earned time of fifteen percent of the total sentence  
12 1 of confinement under section 902.12. To the extent  
12 2 provided in subsection 5, category "A" sentences also  
12 3 include life sentences imposed under section 902.1.  
12 4 An inmate of an institution under the control of the  
12 5 department of corrections who is serving a category  
12 6 "A" sentence is eligible for a reduction of sentence  
12 7 equal to one and two-tenths days for each day the  
12 8 inmate demonstrates good conduct and satisfactorily  
12 9 participates in any program or placement status  
12 10 identified by the director to earn the reduction. The

12 11 programs include but are not limited to the following:  
12 12 (1) Employment in the institution.  
12 13 (2) Iowa state industries.  
12 14 (3) An employment program established by the  
12 15 director.  
12 16 (4) A treatment program established by the  
12 17 director.  
12 18 (5) An inmate educational program approved by the  
12 19 director.

~~12 20 However, an inmate required to participate in a sex  
12 21 offender treatment program shall not be eligible for a  
12 22 reduction of sentence unless the inmate participates  
12 23 in and completes a sex offender treatment program  
12 24 established by the director.~~

12 25 An inmate serving a category "A" sentence is  
12 26 eligible for an additional reduction of sentence of up  
12 27 to three hundred sixty-five days of the full term of  
12 28 the sentence of the inmate for exemplary acts. In  
12 29 accordance with section 903A.4, the director shall by  
12 30 policy identify what constitutes an exemplary act that  
12 31 may warrant an additional reduction of sentence.

12 32 DIVISION III  
12 33 ENHANCED CRIMINAL PENALTIES AND  
12 34 STATUTE OF LIMITATIONS

12 35 Sec. 30. Section 709.8, Code 2005, is amended to  
12 36 read as follows:

12 37 709.8 LASCIVIOUS ACTS WITH A CHILD.

12 38 It is unlawful for any person ~~eighteen~~ sixteen  
12 39 years of age or older to perform any of the following  
12 40 acts with a child with or without the child's consent  
12 41 unless married to each other, for the purpose of  
12 42 arousing or satisfying the sexual desires of either of  
12 43 them:

12 44 1. Fondle or touch the pubes or genitals of a  
12 45 child.

12 46 2. Permit or cause a child to fondle or touch the  
12 47 person's genitals or pubes.

12 48 3. Solicit a child to engage in a sex act or  
12 49 solicit a person to arrange a sex act with a child.

12 50 4. Inflict pain or discomfort upon a child or  
13 1 permit a child to inflict pain or discomfort on the  
13 2 person.

13 3 Any person who violates a provision of this section  
13 4 involving an act included in subsection 1 or 2 shall,  
13 5 upon conviction, be guilty of a class "~~D~~" "C" felony.  
13 6 ~~A person who violates a provision of this section and  
13 7 who is sentenced to a term of confinement shall also  
13 8 be sentenced to an additional term of parole or work  
13 9 release not to exceed two years. The board of parole  
13 10 shall determine whether the person should be released  
13 11 on parole or placed in a work release program. The  
13 12 sentence of an additional term of parole or work  
13 13 release supervision shall commence immediately upon  
13 14 the expiration of the preceding sentence and shall be  
13 15 under the terms and conditions as set out in chapter  
13 16 906. Violations of parole or work release shall be  
13 17 subject to the procedures set out in chapter 905 or  
13 18 908 or rules adopted under those chapters. The  
13 19 sentence of an additional term of parole or work  
13 20 release shall be consecutive to the original term of  
13 21 confinement. Any person who violates a provision of  
13 22 this section involving an act included in subsection 3  
13 23 or 4 shall, upon conviction, be guilty of a class "D"  
13 24 felony.~~

13 25 Sec. 31. Section 802.2, Code 2005, is amended to  
13 26 read as follows:

13 27 802.2 SEXUAL ABUSE == FIRST, SECOND, OR THIRD  
13 28 DEGREE.

13 29 1. An information or indictment for sexual abuse  
13 30 in the first, second, or third degree committed on or  
13 31 with a person who is under the age of eighteen years  
13 32 shall be found within ten years after the person upon  
13 33 whom the offense is committed attains eighteen years  
13 34 of age, or if the identity of the person against whom  
13 35 the information or indictment is sought is established  
13 36 through the use of a DNA profile, an information or  
13 37 indictment shall be found within three years from the  
13 38 date the identity of the person is identified by the  
13 39 person's DNA profile, whichever is later.

13 40 2. An information or indictment for any other  
13 41 sexual abuse in the first, second, or third degree

13 42 shall be found within ten years after its commission,  
13 43 or if the identity of the person against whom the  
13 44 information or indictment is sought is established  
13 45 through the use of a DNA profile, an information or  
13 46 indictment shall be found within three years from the  
13 47 date the identity of the person is identified by the  
13 48 person's DNA profile, whichever is later.

13 49 3. As used in this section, "identified" means a  
13 50 person's legal name is known and the person has been  
14 1 determined to be the source of the DNA.

14 2 Sec. 32. Section 901.5, Code 2005, is amended by  
14 3 adding the following new subsection:

14 4 NEW SUBSECTION. 13. In addition to any other  
14 5 sentence or other penalty imposed against the  
14 6 defendant, the court shall impose a special sentence  
14 7 if required under section 903B.0A or 903B.0B.

14 8 Sec. 33. NEW SECTION. 902.15 ENHANCED PENALTY ==  
14 9 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

14 10 1. A person commits a class "A" felony if the  
14 11 person commits a second or subsequent offense  
14 12 involving any combination of the following offenses:

14 13 a. Sexual abuse in the second degree in violation  
14 14 of section 709.3.

14 15 b. Sexual abuse in the third degree in violation  
14 16 of section 709.4.

14 17 c. Lascivious acts with a child in violation of  
14 18 section 709.8, subsection 1 or 2.

14 19 2. In determining if a violation charged is a  
14 20 second or subsequent offense for purposes of criminal  
14 21 sentencing in this section, each previous violation on  
14 22 which conviction or deferral of judgment was entered  
14 23 prior to the date of the violation charged shall be  
14 24 considered and counted as a separate previous offense,  
14 25 regardless of whether the previous offense occurred  
14 26 before, on, or after the effective date of this Act.  
14 27 Convictions or the equivalent of deferred judgments  
14 28 for violations in any other states under statutes  
14 29 substantially corresponding to the offenses listed in  
14 30 subsection 1 shall be counted as previous offenses.  
14 31 The courts shall judicially notice the statutes of  
14 32 other states which define offenses substantially  
14 33 equivalent to the offenses listed in subsection 1 and  
14 34 can therefore be considered corresponding statutes.

14 35 Sec. 34. NEW SECTION. 903B.0A SPECIAL SENTENCE  
14 36 == CLASS "B" OR CLASS "C" FELONIES.

14 37 A person convicted of a class "C" felony or greater  
14 38 offense under chapter 709, or a class "C" felony under  
14 39 section 728.12, shall also be sentenced, in addition  
14 40 to any other punishment provided by law, to a special  
14 41 sentence committing the person into the custody of the  
14 42 director of the Iowa department of corrections for the  
14 43 rest of the person's life, with eligibility for parole  
14 44 as provided in chapter 906. The special sentence  
14 45 imposed under this section shall commence upon  
14 46 completion of the sentence imposed under any  
14 47 applicable criminal sentencing provisions for the  
14 48 underlying criminal offense and the person shall begin  
14 49 the sentence under supervision as if on parole. The  
14 50 person shall be placed on the corrections continuum in  
15 1 chapter 901B, and the terms and conditions of the  
15 2 special sentence, including violations, shall be  
15 3 subject to the same set of procedures set out in  
15 4 chapters 901B, 905, 906, and chapter 908, and rules  
15 5 adopted under those chapters for persons on parole  
15 6 shall not be for a period greater than two years upon  
15 7 any first revocation, and five years upon any second  
15 8 or subsequent revocation. A special sentence shall be  
15 9 considered a category "A" sentence for purposes of  
15 10 calculating earned time under section 903A.2.

15 11 Sec. 35. NEW SECTION. 903B.0B SPECIAL SENTENCE  
15 12 == CLASS "D" FELONIES OR MISDEMEANORS.

15 13 A person convicted of a misdemeanor or a class "D"  
15 14 felony offense under chapter 709, section 726.2, or  
15 15 section 728.12 shall also be sentenced, in addition to  
15 16 any other punishment provided by law, to a special  
15 17 sentence committing the person into the custody of the  
15 18 director of the Iowa department of corrections for a  
15 19 period of ten years, with eligibility for parole as  
15 20 provided in chapter 906. The special sentence imposed  
15 21 under this section shall commence upon completion of  
15 22 the sentence imposed under any applicable criminal

15 23 sentencing provisions for the underlying criminal  
15 24 offense and the person shall begin the sentence under  
15 25 supervision as if on parole. The person shall be  
15 26 placed on the corrections continuum in chapter 901B,  
15 27 and the terms and conditions of the special sentence,  
15 28 including violations, shall be subject to the same set  
15 29 of procedures set out in chapters 901B, 905, 906, and  
15 30 908, and rules adopted under those chapters for  
15 31 persons on parole. The revocation of release shall  
15 32 not be for a period greater than two years upon any  
15 33 first revocation, and five years upon any second or  
15 34 subsequent revocation. A special sentence shall be  
15 35 considered a category "A" sentence for purposes of  
15 36 calculating earned time under section 903A.2.

15 37 Sec. 36. Section 903B.1, subsection 3, Code 2005,  
15 38 is amended by striking the subsection.

15 39 Sec. 37. Section 906.15, unnumbered paragraph 1,  
15 40 Code 2005, is amended to read as follows:

15 41 Unless sooner discharged, a person released on  
15 42 parole shall be discharged when the person's term of  
15 43 parole equals the period of imprisonment specified in  
15 44 the person's sentence, less all time served in  
15 45 confinement. Discharge from parole may be granted  
15 46 prior to such time, when an early discharge is  
15 47 appropriate. The board shall periodically review all  
15 48 paroles, and when the board determines that any person  
15 49 on parole is able and willing to fulfill the  
15 50 obligations of a law-abiding citizen without further  
16 1 supervision, the board shall discharge the person from  
16 2 parole. A parole officer shall periodically review  
16 3 all paroles assigned to the parole officer, and when  
16 4 the parole officer determines that any person assigned  
16 5 to the officer is able and willing to fulfill the  
16 6 obligations of a law-abiding citizen without further  
16 7 supervision, the officer may discharge the person from  
16 8 parole after notification and approval of the district  
16 9 director and notification of the board of parole. In  
16 10 any event, discharge from parole shall terminate the  
16 11 person's sentence. If a person has been sentenced to  
16 12 a special sentence under section 903B.0A or 903B.0B,  
16 13 the person may be discharged early from the sentence  
16 14 in the same manner as any other person on parole.

16 15 However, a person convicted of a violation of section  
16 16 709.3, 709.4, or 709.8 committed on or with a child,  
16 17 or a person serving a sentence under section 902.12,  
16 18 shall not be discharged from parole until the person's  
16 19 term of parole equals the period of imprisonment  
16 20 specified in the person's sentence, less all time  
16 21 served in confinement.

16 22 Sec. 38. Section 908.5, Code 2005, is amended to  
16 23 read as follows:

16 24 908.5 DISPOSITION.

16 25 1. If a violation of parole is established, the  
16 26 administrative parole judge may continue the parole  
16 27 with or without any modification of the conditions of  
16 28 parole. The administrative parole judge may revoke  
16 29 the parole and require the parolee to serve the  
16 30 sentence originally imposed, or may revoke the parole  
16 31 and reinstate the parolee's work release status.

16 32 2. If the person is serving a special sentence  
16 33 under chapter 903B, the administrative parole judge  
16 34 may revoke the release. Upon the revocation of  
16 35 release, the person shall not serve the entire length  
16 36 of the special sentence imposed, and the revocation  
16 37 shall be for a period not to exceed two years in a  
16 38 correctional institution upon a first revocation and  
16 39 for a period not to exceed five years in a  
16 40 correctional institution upon a second or subsequent  
16 41 revocation.

16 42 3. The order of the administrative parole judge  
16 43 shall contain findings of fact, conclusions of law,  
16 44 and a disposition of the matter.

16 45 DIVISION IV  
16 46 DEATH PENALTY

16 47 Sec. 39. Section 13B.4, Code 2005, is amended by  
16 48 adding the following new subsection:

16 49 NEW SUBSECTION. 6A. The state public defender  
16 50 shall perform all of the following duties with respect  
17 1 to the appointment of counsel for indigent persons in  
17 2 cases in which a sentence of death may be or is to be  
17 3 imposed:

17 4 a. Provide or contract with attorneys for  
17 5 appointment as lead counsel and cocounsel to provide  
17 6 legal services in cases where a person is charged with  
17 7 murder in the first degree, kidnapping, and sexual  
17 8 abuse under section 902.15, and the state has given  
17 9 notice of intent to seek the death penalty or in cases  
17 10 in which a sentence of death is to be imposed.

17 11 b. Conduct or sponsor specialized training  
17 12 programs for attorneys representing persons who may be  
17 13 executed.

17 14 Sec. 40. Section 216A.133, Code 2005, is amended  
17 15 by adding the following new subsection:

17 16 NEW SUBSECTION. 8. Review the effects of the  
17 17 reinstatement of the death penalty on arrest,  
17 18 prosecution, conviction, and incarceration rates; law  
17 19 enforcement duties and ability to obtain evidence  
17 20 necessary for arrests; court dockets and workload;  
17 21 prison space; recidivism rates of persons charged with  
17 22 crimes of violence against persons; and other aspects  
17 23 of the criminal justice system. Based on the review  
17 24 and other factors deemed relevant, the council shall  
17 25 make findings and develop recommendations resulting  
17 26 from those findings. Commencing January 1, 2007, the  
17 27 council shall report its findings and any related  
17 28 recommendations annually to the governor and to the  
17 29 general assembly.

17 30 Sec. 41. NEW SECTION. 602.10111A QUALIFICATIONS  
17 31 OF COUNSEL IN DEATH PENALTY CASES.

17 32 The supreme court shall prescribe rules which  
17 33 establish minimum standards and procedures by which  
17 34 attorneys may become qualified to provide legal  
17 35 services as lead counsel in cases in which a sentence  
17 36 of death may be or is to be imposed.

17 37 Sec. 42. NEW SECTION. 812A.1 PROCEDURE TO  
17 38 DETERMINE SANITY OF CONDEMNED INMATE.

17 39 1. At any time prior to execution of an inmate  
17 40 under section 902.1, if the director of the department  
17 41 of corrections or the counsel for a person who is  
17 42 under a sentence of execution has cause to believe  
17 43 that the inmate is suffering from such a diseased or  
17 44 deranged condition of the mind as to prevent the  
17 45 defendant from knowing the nature and quality of the  
17 46 act the defendant has been convicted of, or from  
17 47 understanding that trial on the offense has taken  
17 48 place and that execution proceedings are about to take  
17 49 place, or to otherwise cause the defendant to lack the  
17 50 capacity to understand the sentence which has been  
18 1 imposed and to participate in any legal proceedings  
18 2 relating to the sentence, the director or counsel may  
18 3 file a request with the court that issued the warrant  
18 4 for execution for a determination of the inmate's  
18 5 sanity. If the district court determines that there  
18 6 is not sufficient reason to believe that the inmate is  
18 7 insane, the court shall enter an order denying the  
18 8 request and shall state the grounds for denying the  
18 9 request. If the court believes that there is  
18 10 sufficient reason to believe that the inmate is  
18 11 insane, the court shall suspend the execution and  
18 12 conduct a hearing to determine the sanity of the  
18 13 inmate.

18 14 2. At the hearing, the court shall determine the  
18 15 issue of the inmate's sanity. Prior to the hearing,  
18 16 the court shall appoint two licensed physicians or  
18 17 licensed psychologists, or one licensed physician and  
18 18 one licensed psychologist, who are qualified by  
18 19 training and practice, for purposes of conducting a  
18 20 psychiatric or psychological examination of the  
18 21 inmate. The physicians or psychologists shall examine  
18 22 the inmate and report any findings in writing to the  
18 23 court within ten days after the order of examination  
18 24 is issued. The inmate shall have the right to present  
18 25 evidence and cross-examine any witnesses at the  
18 26 hearing. Any statement made by the inmate during the  
18 27 course of any examination provided for in this  
18 28 section, whether or not the inmate consents to the  
18 29 examination, shall not be admitted into evidence  
18 30 against the inmate in any criminal proceeding for  
18 31 purposes other than a determination of the inmate's  
18 32 sanity.

18 33 3. If, at the conclusion of a hearing held  
18 34 pursuant to this section, the court determines that

18 35 the inmate is sane, the court shall enter an order  
18 36 setting a date for the inmate's execution, which shall  
18 37 be carried into effect in the same manner as provided  
18 38 in the original sentence. A copy of the order shall  
18 39 be sent to the director of the department of  
18 40 corrections and the governor.

18 41 4. If, at the conclusion of a hearing held  
18 42 pursuant to this section, the court determines that  
18 43 the inmate is insane, the court shall suspend the  
18 44 execution until further order. At any time after  
18 45 issuance of the order, if the court has sufficient  
18 46 reason to believe that the inmate has become sane, the  
18 47 court shall again determine the sanity of the inmate  
18 48 as provided by this section. Proceedings pursuant to  
18 49 this section may continue to be held at such times as  
18 50 the court orders until it is either determined that  
19 1 the inmate is sane or incurably insane.

19 2 Sec. 43. NEW SECTION. 814.28 REVIEW OF DEATH  
19 3 SENTENCE.

19 4 1. In a case in which a sentence of death is  
19 5 imposed, the supreme court shall automatically review  
19 6 the judgment and sentence. The court's review of the  
19 7 case shall be de novo. The case shall not be  
19 8 transferred to the court of appeals.

19 9 2. A review by the supreme court of a judgment and  
19 10 sentence imposing the punishment of death has priority  
19 11 over all other criminal and other actions pending  
19 12 before the supreme court.

19 13 3. The supreme court shall review the trial and  
19 14 judgment, and shall separately review the sentencing  
19 15 proceeding. Upon determining that errors did not  
19 16 occur at the trial requiring reversal or modification  
19 17 of the judgment, the supreme court shall proceed to  
19 18 determine if the sentence of death is lawfully  
19 19 imposed. In its review of the sentencing proceeding  
19 20 the supreme court shall determine all of the  
19 21 following:

19 22 a. Whether the sentence of death was imposed  
19 23 capriciously or under the influence of prejudice or  
19 24 other arbitrary factor.

19 25 b. Whether the special verdicts returned under  
19 26 section 901.11 are supported by the evidence.

19 27 c. Whether the sentence of death is excessive or  
19 28 disproportionate to the penalty imposed in similar  
19 29 cases, considering both the crime and the defendant.

19 30 4. If the supreme court determines that the  
19 31 sentence of death was not lawfully imposed, the court  
19 32 shall set aside the sentence and shall remand the case  
19 33 to the trial court for a second sentencing proceeding  
19 34 to determine if the imposition of death is warranted.

19 35 5. If the supreme court affirms the judgment and  
19 36 sentence of death, the clerk of the supreme court  
19 37 shall certify the judgment of the supreme court under  
19 38 the seal of the court to the clerk of the trial court.

19 39 Sec. 44. Section 815.10, Code 2005, is amended by  
19 40 adding the following new subsection:

19 41 NEW SUBSECTION. 1A. If two attorneys have not  
19 42 already been appointed pursuant to section 13B.4 or  
19 43 13B.9, the court shall appoint, for each indigent  
19 44 person who is charged with murder in the first degree  
19 45 and in which a notice of intent to seek the death  
19 46 penalty has been filed, two attorneys who are  
19 47 qualified under section 602.10111A to represent the  
19 48 person in the murder proceedings and in all state  
19 49 legal proceedings which take place from the time the  
19 50 person is indicted or arraigned until the person is  
20 1 sentenced on the charge. In addition, if at any point  
20 2 in federal postconviction proceedings an indigent  
20 3 person is not afforded court-appointed counsel, the  
20 4 state shall provide counsel to the person to present  
20 5 any claims determined meritorious by the federal court  
20 6 if the person is not otherwise represented by legal  
20 7 counsel. Only private attorneys and public defenders  
20 8 who are qualified to provide representation in cases  
20 9 in which the death penalty may be imposed are eligible  
20 10 for appointment or assignment to a case in which the  
20 11 death penalty may be imposed.

20 12 Sec. 45. NEW SECTION. 901.11 MURDER PROCEEDINGS  
20 13 == REQUEST FOR DEATH PENALTY == PENALTY PROCEEDINGS.

20 14 1. If a notice of intent to seek the death penalty  
20 15 has been filed, objections to the imposition of the

20 16 death penalty based upon allegations that a defendant  
20 17 was mentally retarded or mentally ill at the time of  
20 18 the commission of the offense shall be raised within  
20 19 the time provided for the filing of pretrial motions  
20 20 under rule of criminal procedure 2.11, Iowa court  
20 21 rules. The court may, for good cause shown, allow  
20 22 late filing of the motion. Hearing on the motion  
20 23 shall be held prior to trial and the burden of proof  
20 24 shall be on the defendant to prove mental retardation  
20 25 or mental illness by a preponderance of the evidence.  
20 26 However, a rebuttable presumption of mental  
20 27 retardation arises if a defendant has an intelligence  
20 28 quotient of seventy or below. If the court finds that  
20 29 the defendant is mentally retarded, the defendant, if  
20 30 convicted of murder in the first degree, shall not be  
20 31 sentenced to death but shall be sentenced to life  
20 32 imprisonment in the manner provided in section 902.1,  
20 33 subsection 1. A finding by the court that the  
20 34 evidence presented by the defendant at the hearing  
20 35 does not preclude the imposition of the death penalty  
20 36 under this section and section 902.15 shall not  
20 37 preclude the introduction of evidence of mental  
20 38 retardation or mental illness during the penalty  
20 39 proceeding. If the court finds that evidence of  
20 40 mental retardation or mental illness does not preclude  
20 41 imposition of the death penalty, evidence of mental  
20 42 retardation or mental illness may be reviewed by the  
20 43 jury in the penalty proceeding and the jury shall not  
20 44 be informed of the finding in the initial proceeding  
20 45 at any time during the penalty proceeding.

20 46 2. If at the trial on a charge of murder in the  
20 47 first degree, the state intends to request that the  
20 48 death penalty be imposed under section 902.1,  
20 49 subsection 2, the prosecutor shall file a notice of  
20 50 intent to seek the death penalty, listing the  
21 1 additional factors enumerated under section 902.15  
21 2 that the state intends to establish in support of  
21 3 imposition of the death penalty, at the time of and as  
21 4 part of the information or indictment filed in the  
21 5 case.

21 6 3. If a notice of intent to seek the death penalty  
21 7 has been filed, the trial shall be conducted in  
21 8 bifurcated proceedings before the same trier of fact.  
21 9 During the initial proceeding, the jury, or the court,  
21 10 if the defendant waives the right to a jury trial,  
21 11 shall decide only whether the defendant is guilty or  
21 12 not guilty of murder in the first degree, kidnapping,  
21 13 and sexual abuse.

21 14 a. If, in the initial proceeding, the court or  
21 15 jury finds the defendant guilty of, or the defendant  
21 16 pleads guilty to, an offense other than murder in the  
21 17 first degree, kidnapping, and sexual abuse, the court  
21 18 shall sentence the defendant in accordance with the  
21 19 sentencing procedures set forth in rule of criminal  
21 20 procedure 2.23, Iowa court rules, and chapters 901  
21 21 through 909, which are applicable to the offense.

21 22 b. If the court or jury finds the defendant guilty  
21 23 of, or the defendant pleads guilty to, murder in the  
21 24 first degree, kidnapping, and sexual abuse but the  
21 25 prosecuting attorney waives the death penalty, the  
21 26 court shall sentence the defendant to life  
21 27 imprisonment in accordance with the sentencing  
21 28 procedures set forth in rule of criminal procedure  
21 29 2.23, Iowa court rules, and chapters 901 through 909,  
21 30 which are applicable to convictions of murder in the  
21 31 first degree, kidnapping, and sexual abuse.

21 32 c. If the court or jury finds the defendant guilty  
21 33 of murder in the first degree, kidnapping, and sexual  
21 34 abuse, or a defendant enters a plea of guilty in the  
21 35 initial proceeding, and the prosecuting attorney does  
21 36 not waive imposition of the death penalty, a penalty  
21 37 proceeding shall be held in the manner provided in  
21 38 subsections 4 through 12.

21 39 4. No sooner than twenty-four hours after a  
21 40 verdict of guilty or a plea of guilty to the charge of  
21 41 murder in the first degree, kidnapping, and sexual  
21 42 abuse is returned in the initial proceeding, a penalty  
21 43 proceeding shall be held to determine whether the  
21 44 defendant shall be sentenced to death or to life  
21 45 imprisonment. The proceeding shall be conducted in  
21 46 the trial court before the trial jury, or the court if

21 47 the defendant has waived the right to a jury trial or  
21 48 has waived the right for the proceeding to be before  
21 49 the trial jury. Both the state and the defendant  
21 50 shall have the right to present opening statements at  
22 1 the commencement of the penalty proceedings. In the  
22 2 proceeding, evidence relevant to the existence of any  
22 3 aggravating or mitigating circumstances may be  
22 4 presented as follows:

22 5 a. The state or the defendant may present evidence  
22 6 relevant to the conviction of murder in the first  
22 7 degree and any of the additional factors enumerated in  
22 8 section 902.15 and any aggravating circumstances other  
22 9 than juvenile delinquency adjudications for offenses  
22 10 which carry penalties equivalent to the penalties  
22 11 imposed for simple or serious misdemeanors. The state  
22 12 may introduce evidence of the actual harm caused by  
22 13 the commission of the murder including, but not  
22 14 limited to, evidence relating to the life of the  
22 15 victim and the impact of the loss of the victim to the  
22 16 victim's family and society.

22 17 b. The defendant may present evidence that the  
22 18 defendant was mentally retarded at the time of the  
22 19 commission of the offense. The burden of proof shall  
22 20 be on the defendant to prove mental retardation by a  
22 21 preponderance of the evidence. However, a rebuttable  
22 22 presumption of mental retardation arises if a  
22 23 defendant has an intelligence quotient of seventy or  
22 24 below.

22 25 c. The state or the defendant may present evidence  
22 26 relevant to any mitigating circumstances which may  
22 27 exist. Mitigating circumstances may include the  
22 28 following circumstances:

22 29 (1) The defendant was under the influence of an  
22 30 extreme mental or emotional disturbance insufficient  
22 31 to constitute a defense.

22 32 (2) The age of the defendant at the time of the  
22 33 murder.

22 34 (3) The defendant's capacity to appreciate the  
22 35 wrongfulness of the defendant's conduct and to conform  
22 36 that conduct to the requirements of law was  
22 37 significantly impaired as a result of a mental disease  
22 38 or defect or mental retardation, but not to a degree  
22 39 sufficient to constitute a defense.

22 40 (4) The defendant has no significant history of  
22 41 prior adult criminal activity.

22 42 (5) The defendant acted under extreme duress or  
22 43 under the substantial domination of another person.

22 44 (6) The defendant did not directly commit the  
22 45 murder and the defendant did not intend to kill or  
22 46 anticipate that lethal force would be used.

22 47 (7) Any other factor which is relevant to the  
22 48 defendant's character or record or to the  
22 49 circumstances of the offense.

22 50 d. The state and the defendant or the defendant's  
23 1 counsel shall be permitted to present and cross=  
23 2 examine witnesses and present arguments for or against  
23 3 a sentence of death. Evidence regarding aggravating  
23 4 and mitigating circumstances shall not be governed by  
23 5 the rules governing admissibility of evidence, except  
23 6 that introduction of evidence secured in violation of  
23 7 the Constitution of the United States or of the  
23 8 Constitution of the State of Iowa shall not be  
23 9 permitted.

23 10 5. At the conclusion of presentation of evidence  
23 11 in the penalty proceeding, the state and the defendant  
23 12 or the defendant's counsel shall be permitted to make  
23 13 closing arguments, including any rebuttal arguments,  
23 14 in the same manner as in the initial proceeding and  
23 15 the following issues shall be determined by the jury  
23 16 or the court, if there is no jury:

23 17 a. Whether the aggravating circumstance or  
23 18 circumstances outweigh any one or more mitigating  
23 19 circumstances.

23 20 b. Whether the defendant shall be sentenced to  
23 21 death.

23 22 6. A recommendation for a sentence of death shall  
23 23 not be permitted if the recommendation is based on the  
23 24 race, color, religious beliefs, national origin, or  
23 25 sex of the defendant or any victim. After submission  
23 26 of the issues, but prior to the return of a finding in  
23 27 the penalty proceeding, if the matter is tried before

23 28 a jury, the court shall instruct the jury that in  
23 29 considering whether a sentence of death is justified,  
23 30 it shall not consider race, color, religious beliefs,  
23 31 national origin, or sex of the defendant or of any  
23 32 victim. The court shall further instruct the jury  
23 33 that it shall not return a sentence of death unless it  
23 34 concludes that such a sentence would be recommended no  
23 35 matter what the race, color, religious beliefs,  
23 36 national origin, or sex of the defendant or any victim  
23 37 may be.

23 38 7. After submission of the issues, but prior to  
23 39 the commencement of the jury deliberations in the  
23 40 penalty proceeding, the court shall instruct the jury  
23 41 that if the defendant is not sentenced to death, the  
23 42 court is required by law to impose a sentence of  
23 43 imprisonment until death without parole. The court  
23 44 shall further instruct the jury that the sentence of  
23 45 imprisonment until death without parole is required by  
23 46 law if the jury fails to reach a unanimous verdict  
23 47 recommending a sentence of death.

23 48 8. Concurrently with the return of the findings on  
23 49 the issues submitted under subsection 5, the jury, or  
23 50 the court if there is no jury, shall return special  
24 1 verdicts as follows:

24 2 a. Which aggravating circumstances were  
24 3 established and were considered in reaching the  
24 4 verdict.

24 5 b. Which mitigating circumstances were established  
24 6 and were considered in reaching the verdict returned  
24 7 on the issue specified in subsection 5, paragraph "a".

24 8 9. If the jury, or the court if there is no jury,  
24 9 returns a unanimous affirmative finding on each of the  
24 10 issues submitted under subsection 5, paragraphs "a"  
24 11 and "b", the court shall enter a judgment of  
24 12 conviction and shall sentence the defendant to death  
24 13 as provided in section 902.1, subsection 2.

24 14 10. However, if evidence that the defendant was  
24 15 not a major participant in the commission of the  
24 16 murder and that the defendant's conduct did not  
24 17 manifest a reckless indifference to human life is  
24 18 presented to the jury, or the court, if there is no  
24 19 jury, the jury or the court shall also return a  
24 20 special verdict on the issue. If the jury unanimously  
24 21 determines, or the court, if there is no jury, finds  
24 22 that a preponderance of evidence exists that shows  
24 23 that the defendant was not a major participant in the  
24 24 commission of the murder and that the defendant's  
24 25 conduct did not manifest a reckless indifference to  
24 26 human life, the court shall enter a judgment of  
24 27 conviction and shall sentence the defendant to life  
24 28 imprisonment as provided in section 902.1, subsection  
24 29 1, even if the jury or the court returns unanimous  
24 30 affirmative findings on each of the issues submitted  
24 31 under subsection 5.

24 32 11. If the jury, or the court, if there is no  
24 33 jury, returns a negative finding on any of the issues  
24 34 submitted under subsection 5, paragraphs "a" and "b",  
24 35 the court shall enter a judgment of conviction and  
24 36 shall sentence the defendant to life imprisonment as  
24 37 provided in section 902.1, subsection 1.

24 38 12. After a verdict has been rendered it shall be  
24 39 recorded on the jury verdict form and shall be read  
24 40 and recorded in open court. The jurors shall be  
24 41 collectively asked by the court whether the verdict  
24 42 returned is their true and correct verdict. Even  
24 43 though no juror makes any declaration to the contrary,  
24 44 the jury shall, if either party so requests, be polled  
24 45 and each juror shall be separately asked whether the  
24 46 verdict rendered by the jury foreperson is the juror's  
24 47 true and correct verdict. If, upon either the  
24 48 collective or the separate inquiry, any juror denies  
24 49 that the verdict is the juror's verdict, the court  
24 50 shall refuse to accept the verdict. The court may  
25 1 direct inquiry or permit inquiry by counsel to  
25 2 ascertain whether any juror has been subjected to  
25 3 coercion or has become confused during the jury  
25 4 deliberation process. The court may, as appropriate,  
25 5 direct the jury to resume deliberation in the case.  
25 6 If no disagreement on the verdict is expressed by any  
25 7 of the jurors, the court shall discharge the jury.

25 8 13. This section shall not apply to a defendant

25 9 who was under the age of eighteen at the time the  
25 10 offense was committed.  
25 11 Sec. 46. Section 902.1, Code 2005, is amended to  
25 12 read as follows:  
25 13 902.1 CLASS "A" FELONY.  
25 14 1. Upon Except as otherwise provided in subsection  
25 15 2, upon a plea of guilty, a verdict of guilty, or a  
25 16 special verdict upon which a judgment of conviction of  
25 17 a class "A" felony may be rendered, the court shall  
25 18 enter a judgment of conviction and shall commit the  
25 19 defendant into the custody of the director of the Iowa  
25 20 department of corrections for the rest of the  
25 21 defendant's life. Nothing in the Iowa corrections  
25 22 code pertaining to deferred judgment, deferred  
25 23 sentence, suspended sentence, or reconsideration of  
25 24 sentence applies to a sentence of life imprisonment  
25 25 for a class "A" felony, and a person convicted of a  
25 26 class "A" felony and sentenced to life imprisonment  
25 27 shall not be released on parole unless the governor  
25 28 commutes the sentence to a term of years.  
25 29 2. Upon return of a plea or verdict of guilty to  
25 30 the offense of murder in the first degree under  
25 31 section 707.2, kidnapping, and sexual abuse, and a  
25 32 return of a verdict in favor of a sentence of death in  
25 33 a penalty proceeding conducted as provided in section  
25 34 901.11, the court shall enter a judgment of conviction  
25 35 and shall commit the defendant into the custody of the  
25 36 director of the Iowa department of corrections. The  
25 37 sentence shall be carried out by the administration of  
25 38 a lethal injection pursuant to rules adopted by the  
25 39 board of corrections. If a defendant, for whom a  
25 40 warrant of execution is issued, is pregnant, the  
25 41 execution shall not take place until after the  
25 42 defendant is no longer pregnant. If a defendant, for  
25 43 whom a warrant of execution is issued, is suffering  
25 44 from such a diseased or deranged condition of the mind  
25 45 as to prevent the defendant from knowing the nature  
25 46 and quality of the act the defendant has been  
25 47 convicted of, or from understanding that trial on the  
25 48 offense has taken place and that execution proceedings  
25 49 are about to take place, or otherwise causes the  
25 50 defendant to lack the capacity to understand the  
26 1 sentence which has been imposed and to participate in  
26 2 any legal proceedings relating to the sentence, the  
26 3 execution shall not take place until after the  
26 4 defendant's capacity is restored. If the director of  
26 5 the department of corrections or the defendant's  
26 6 counsel files a request with the court which issued  
26 7 the warrant of execution, alleging that the defendant  
26 8 suffers from such a diseased or deranged condition, a  
26 9 hearing on the matter shall be held in the manner  
26 10 provided in section 812A.1. If a defendant was under  
26 11 the age of eighteen at the time the offense was  
26 12 committed, the defendant shall be sentenced as  
26 13 provided in subsection 1. For the purposes of this  
26 14 section, "lethal injection" means a continuous  
26 15 intravenous injection of a lethal substance sufficient  
26 16 to cause death.  
26 17 Sec. 47. NEW SECTION. 902.15 FIRST DEGREE MURDER  
26 18 == ADDITIONAL FACTORS.  
26 19 A person who commits murder in the first degree,  
26 20 who is not mentally retarded or mentally ill, and who  
26 21 is age eighteen or older at the time the offense is  
26 22 committed, shall be eligible for a sentence of death  
26 23 under section 902.1, subsection 2, if the person also  
26 24 kidnaps and commits sexual abuse against the murder  
26 25 victim who was a minor.  
26 26 For purposes of this section, "mentally retarded"  
26 27 means significant subaverage general intellectual  
26 28 functioning accompanied by significant deficits or  
26 29 impairments in adaptive functioning manifested in the  
26 30 developmental period, but no later than the age of  
26 31 eighteen years, and accompanied by deficits in  
26 32 adaptive behavior.  
26 33 For purposes of this section, "mentally ill" means  
26 34 the condition of a person who is suffering from a  
26 35 chronic and persistent serious mental disease or  
26 36 disorder and who, by reason of that condition, lacks  
26 37 sufficient judgment to make responsible decisions  
26 38 regarding treatment and is reasonably likely to injure  
26 39 the person's self or others who may come into contact

26 40 with the person if the person is allowed to remain at  
26 41 liberty without treatment.

26 42 Sec. 48. NEW SECTION. 902.16 DATA COLLECTION FOR  
26 43 DEATH PENALTY.

26 44 1. The supreme court shall collect data on all  
26 45 murder charges in which the death penalty is or was  
26 46 not waived, which are filed and processed in the  
26 47 courts in this state. This data may be used by the  
26 48 supreme court to determine whether death sentences  
26 49 imposed are excessive or disproportionate, or under  
26 50 the influence of prejudice as a result of racial  
27 1 discrimination under section 814.28. The court shall  
27 2 make this data available to litigants in death penalty  
27 3 cases.

27 4 2. Data collected by public officials concerning  
27 5 factors relevant to the imposition of the death  
27 6 sentence shall be made publicly available.

27 7 Sec. 49. NEW SECTION. 903C.1 EXECUTIONS ==  
27 8 REFUSAL TO PERFORM.

27 9 An employee of the state who may lawfully perform,  
27 10 assist, or participate in the execution of a person  
27 11 pursuant to section 902.1, and rules adopted by the  
27 12 department of corrections, shall not be required to  
27 13 perform, assist, or participate in the execution.  
27 14 State employees who refuse to perform, assist, or  
27 15 participate in the execution of a person shall not be  
27 16 discriminated against in any way, including, but not  
27 17 limited to, employment, promotion, advancement,  
27 18 transfer, licensing, education, training, or the  
27 19 granting of any privileges or appointments because of  
27 20 the refusal to perform, assist, or participate in the  
27 21 execution.

27 22 Sec. 50. Section 904.105, Code 2005, is amended by  
27 23 adding the following new subsection:  
27 24 NEW SUBSECTION. 9A. Adopt rules pursuant to  
27 25 chapter 17A pertaining to executions of persons  
27 26 convicted of murder in the first degree. Rules  
27 27 adopted shall include, but are not limited to, rules  
27 28 permitting the witnessing of executions by members of  
27 29 the public and the victim's family. Invitations to  
27 30 witness an execution shall at least be extended to the  
27 31 following representatives of the news media:  
27 32 a. A representative from a wire service serving  
27 33 Iowa.  
27 34 b. A representative from a broadcasting network  
27 35 serving Iowa.  
27 36 c. A representative from a television station  
27 37 located in Iowa.  
27 38 d. A representative from a radio station located  
27 39 in Iowa.  
27 40 e. A representative from a daily newspaper  
27 41 published in Iowa.  
27 42 f. A representative from a weekly newspaper  
27 43 published in Iowa.  
27 44 g. A representative from the news media from the  
27 45 community in which the condemned person resided, if  
27 46 that community is located in Iowa.

27 47 Sec. 51. Rules of criminal procedure, Iowa court  
27 48 rules, are amended by adding the following four  
27 49 sections of this Act.

27 50 Sec. 52. NEW RULE. 2. DEATH PENALTY ==  
28 1 PROCEDURE.

28 2 2.\_\_\_\_(1) If a notice of intent to seek the death  
28 3 penalty has been filed, objections to the imposition  
28 4 of the death penalty based upon allegations that a  
28 5 defendant was mentally retarded at the time of the  
28 6 commission of the offense shall be raised within the  
28 7 time provided for the filing of pretrial motions under  
28 8 R.Cr.P. 2.11, Iowa court rules. The court may, for  
28 9 good cause shown, allow late filing of the motion.  
28 10 Hearing on the motion shall be held prior to trial and  
28 11 the burden of proof shall be on the defendant to prove  
28 12 mental retardation by a preponderance of the evidence.  
28 13 However, a rebuttable presumption of mental  
28 14 retardation arises if a defendant has an intelligence  
28 15 quotient of seventy or below. A finding of the court  
28 16 that the evidence presented by the defendant at the  
28 17 hearing does not preclude the imposition of the death  
28 18 penalty under this rule and Iowa Code section 902.15  
28 19 shall not preclude the introduction of evidence of  
28 20 mental retardation during the penalty proceeding. If

28 21 the court finds that the evidence presented by the  
28 22 defendant does not preclude the imposition of the  
28 23 death penalty, evidence of mental retardation may be  
28 24 reviewed by the jury during the penalty proceeding and  
28 25 the jury shall not be informed of the finding in the  
28 26 initial proceeding at any time during the penalty  
28 27 proceeding.

28 28 2.\_\_\_\_(2) Upon a finding or plea that a defendant  
28 29 is guilty of murder in the first degree, kidnapping,  
28 30 and sexual abuse in an initial proceeding, if a notice  
28 31 of intent to seek the death penalty has been filed and  
28 32 has not been waived, the court shall conduct a  
28 33 separate penalty proceeding to determine whether the  
28 34 defendant shall be sentenced to death or to life  
28 35 imprisonment. The penalty proceeding shall be  
28 36 conducted in the trial court before the trial jury, or  
28 37 the court, if there is no jury, no sooner than twenty=  
28 38 four hours after the return of the verdict or plea in  
28 39 the initial proceeding. In the penalty proceeding,  
28 40 additional evidence may be presented as to the  
28 41 conviction for murder in the first degree, kidnapping,  
28 42 and sexual abuse or any aggravating or mitigating  
28 43 circumstance which may exist. Presentation of  
28 44 evidence which is relevant to the existence of an  
28 45 aggravating or mitigating circumstance shall not be  
28 46 bound by the rules of evidence. This subsection does  
28 47 not authorize the introduction of any evidence secured  
28 48 in violation of the Constitution of the United States  
28 49 or of the Constitution of the State of Iowa. The  
28 50 state and the defendant or the defendant's counsel  
29 1 shall be permitted to cross=examine witnesses and to  
29 2 present arguments for or against a sentence of death.

29 3 2.\_\_\_\_(3) On conclusion of the presentation of the  
29 4 evidence in the penalty proceeding, the state and the  
29 5 defendant or the defendant's counsel shall be  
29 6 permitted to make closing arguments, including any  
29 7 rebuttal arguments, in the same manner as in the  
29 8 initial proceeding and the court shall submit each of  
29 9 the following issues to the jury:

29 10 a. Whether one or more of those circumstances  
29 11 outweigh any one or more mitigating circumstances.

29 12 b. Whether the defendant shall be sentenced to  
29 13 death.

29 14 If the case is not tried to a jury, the court shall  
29 15 determine the issues.

29 16 2.\_\_\_\_(4) The state must prove the issue in rule 2.  
29 17 \_\_\_\_ (3)(a) beyond a reasonable doubt, and the jury, or  
29 18 the court if there is no jury, shall return a special  
29 19 verdict of "yes" or "no" on each issue.

29 20 2.\_\_\_\_(5) If the case is tried to a jury, the court  
29 21 shall charge the jury that:

29 22 a. It shall answer any issue "yes" if it agrees  
29 23 unanimously.

29 24 b. It shall answer any issue "no" if the jurors  
29 25 unanimously agree that the answer is "no" or if the  
29 26 jurors do not unanimously agree that the answer is  
29 27 "yes".

29 28 2.\_\_\_\_(6) Concurrently with the return of the  
29 29 special verdicts under rule 2.\_\_\_\_(4), the jury, or the  
29 30 court if there is no jury, shall also return special  
29 31 verdicts as follows:

29 32 a. Which aggravating circumstances were  
29 33 established and were considered in reaching the  
29 34 verdict returned on the issue specified in rule

29 35 2.\_\_\_\_(3)(a).

29 36 b. Which mitigating circumstances were established  
29 37 and were considered in reaching the verdict returned  
29 38 on the issue specified in rule 2.\_\_\_\_(3)(a).

29 39 2.\_\_\_\_(7) If the jury, or the court, if there is no  
29 40 jury, returns an affirmative finding on all applicable  
29 41 issues, the court shall sentence the defendant to  
29 42 death. If the jury or the court returns a negative  
29 43 finding on any applicable issue, the court shall  
29 44 sentence the defendant to the custody of the director  
29 45 of the department of corrections for confinement for  
29 46 the rest of the defendant's life.

29 47 2.\_\_\_\_(8) After a verdict has been rendered it  
29 48 shall be recorded on the jury verdict form and shall  
29 49 be read and recorded in open court. The jurors shall  
29 50 be collectively asked by the court whether the verdict  
30 1 returned is their true and correct verdict. Even

30 2 though no juror makes any declaration to the contrary,  
30 3 the jury shall, if either party so requests, be polled  
30 4 and each juror shall be separately asked whether the  
30 5 verdict rendered by the jury foreperson is the juror's  
30 6 true and correct verdict. If, upon either the  
30 7 collective or the separate inquiry, any juror denies  
30 8 that the verdict is the juror's verdict, the court  
30 9 shall refuse to accept the verdict. The court may  
30 10 direct inquiry or permit inquiry by counsel to  
30 11 ascertain whether any juror has been subjected to  
30 12 coercion or has become confused during the jury  
30 13 deliberation process. The court may, as appropriate,  
30 14 direct the jury to resume deliberation in the case.  
30 15 If no disagreement on the verdict is expressed by any  
30 16 of the jurors, the court shall discharge the jury.  
30 17 2.\_\_(9) Provisions relating to deferred judgment,  
30 18 deferred sentence, suspended sentence, reconsideration  
30 19 of sentence, probation, parole, or work release  
30 20 contained in Iowa Code chapters 901 through 909 do not  
30 21 apply to a conviction of murder in the first degree,  
30 22 kidnapping, and sexual abuse under Iowa Code section  
30 23 902.15 if the defendant is sentenced to death.  
30 24 Sec. 53. NEW RULE. 2.\_\_(9) AUTOMATIC REVIEW ==  
30 25 STAY OF EXECUTION OF JUDGMENT.  
30 26 2.\_\_(1) A judgment of conviction and sentence of  
30 27 death shall be reviewed automatically in the manner  
30 28 provided in Iowa Code section 814.28, and the Iowa  
30 29 supreme court has exclusive jurisdiction of the  
30 30 review.  
30 31 2.\_\_(2) Upon entry of judgment and sentence of  
30 32 death, the trial court shall prepare a complete record  
30 33 and transcript of the action in the manner provided in  
30 34 the rules of criminal procedure and shall docket the  
30 35 record and transcript with the clerk of the supreme  
30 36 court.  
30 37 2.\_\_(3) The execution of judgment of the trial  
30 38 court is stayed as a matter of law from the time of  
30 39 its entry until the judgment of the supreme court is  
30 40 certified to and entered by the trial court. Upon  
30 41 entry of a judgment of the supreme court which affirms  
30 42 the conviction and sentence, the stay of execution of  
30 43 judgment terminates as a matter of law.  
30 44 2.\_\_(4) All court costs required due to the  
30 45 automatic preparation of the record and transcript,  
30 46 docketing with the supreme court, and stay of  
30 47 execution of judgment shall be assessed to the state.  
30 48 Sec. 54. NEW RULE. 2.\_\_(9) ISSUANCE OF WARRANT.  
30 49 2.\_\_(1) Upon entry by the trial court of the  
30 50 judgment of the supreme court affirming a judgment and  
31 1 sentence of death, a district judge shall within five  
31 2 days of the entry issue a warrant under the seal of  
31 3 the court for the execution of the sentence of death.  
31 4 The warrant shall specifically set forth the offense  
31 5 and the fact of conviction, shall state the judgment  
31 6 and sentence of the court, shall state that the  
31 7 judgment and sentence were affirmed by the supreme  
31 8 court and the date of entry of judgment of the supreme  
31 9 court in the trial court, and shall, subject to the  
31 10 requirements of Iowa Code section 902.1, subsection 2,  
31 11 specify a range of five days for execution of the  
31 12 defendant which shall be not less than fifty nor more  
31 13 than sixty days after the date of entry in the trial  
31 14 court of the judgment of the supreme court affirming  
31 15 the judgment and sentence of death. The warrant shall  
31 16 be directed to the director of the department of  
31 17 corrections commanding the director to cause the  
31 18 warrant to be executed within the dates specified.  
31 19 The trial court shall deliver the warrant to the  
31 20 sheriff of the county in which judgment of conviction  
31 21 was entered and the sheriff shall deliver the warrant  
31 22 to the director of the department of corrections. The  
31 23 director of the department of corrections shall  
31 24 acknowledge receipt of the warrant and the defendant,  
31 25 and the sheriff shall return the acknowledgment to the  
31 26 office of the clerk of the trial court from which the  
31 27 warrant was issued.  
31 28 2.\_\_(2) Immediately after issuance of a warrant  
31 29 ordering a sentence of death, the clerk of the trial  
31 30 court issuing the warrant shall transmit by certified  
31 31 mail to the governor a copy of the indictment, the  
31 32 plea, the verdict and special findings, the

31 33 affirmation of judgment and sentence by the supreme  
31 34 court, and the complete transcript of the trial court.  
31 35 2.\_\_\_\_(3) Notwithstanding rule 2.\_\_\_\_(1), if a  
31 36 defendant, for whom a warrant of execution is issued,  
31 37 is pregnant, the execution shall not take place until  
31 38 after the defendant is no longer pregnant.

31 39 Notwithstanding rule 2.\_\_\_\_(1), if a defendant, for  
31 40 whom a warrant of execution is issued, is suffering  
31 41 from such a diseased or deranged condition of the mind  
31 42 as to prevent the defendant from knowing the nature  
31 43 and quality of the act the defendant has been  
31 44 convicted of, or from understanding that trial on the  
31 45 offense has taken place and that execution proceedings  
31 46 are about to take place, or to otherwise cause the  
31 47 defendant to lack the capacity to understand the  
31 48 sentence which has been imposed and to participate in  
31 49 any legal proceedings relating to the sentence, the  
31 50 execution shall not take place until after the  
32 1 defendant is no longer suffering from the condition.

32 2 Sec. 55. NEW RULE. 2.\_\_\_\_ EVIDENCE AT PENALTY  
32 3 PROCEEDING WHERE DEATH SENTENCE REQUESTED.

32 4 2.\_\_\_\_(1) At a reasonable time before the  
32 5 commencement of initial proceedings in a first degree  
32 6 murder trial in which a sentence of death has been  
32 7 requested, each party shall file and serve upon the  
32 8 other party the following:

32 9 a. A list of all aggravating or mitigating  
32 10 circumstances which the party intends to prove during  
32 11 the sentencing proceedings.

32 12 b. The names of all persons whom the party intends  
32 13 to call as witnesses during the sentencing  
32 14 proceedings.

32 15 c. Notwithstanding rule 2.14, copies, or for  
32 16 inspection purposes, the location, of all documents,  
32 17 including books, papers, writings, drawings, graphs,  
32 18 charts, photographs, telephone records, and other data  
32 19 compilations from which information can be obtained,  
32 20 or other objects which the party intends to offer into  
32 21 evidence during the sentencing proceedings. If copies  
32 22 are not supplied to opposing counsel, the party shall  
32 23 make the items available for inspection and copying  
32 24 without order of the court.

32 25 2.\_\_\_\_(2) In proceedings to determine whether the  
32 26 sentence shall be death or life imprisonment, evidence  
32 27 may be presented as to any matter which the trial  
32 28 court deems relevant to the sentence, including but  
32 29 not limited to the nature, circumstances, and manner  
32 30 of completion of the murder, and the defendant's  
32 31 character, background, history, and mental and  
32 32 physical condition. The trial court shall admit any  
32 33 relevant admissible evidence respecting any  
32 34 aggravating or mitigating circumstances, if the party  
32 35 has included the circumstance on a list provided  
32 36 pursuant to this rule, or good cause is shown for the  
32 37 failure to do so.

32 38 Sec. 56. EFFECTIVE DATE == SEVERABILITY.

32 39 1. This division of this Act takes effect January  
32 40 1, 2006, and applies to offenses committed on or after  
32 41 that date.

32 42 2. If any provision of this division of this Act  
32 43 or the application thereof to any person is invalid,  
32 44 the invalidity shall not affect the provisions or  
32 45 application of this division of this Act which can be  
32 46 given effect without the invalid provisions or  
32 47 application and to this end, the provisions of this  
32 48 division of this Act are severable.

32 49 DIVISION V  
32 50 VICTIM RIGHTS

33 1 Sec. 57. NEW SECTION. 235D.1 CRIMINAL HISTORY  
33 2 CHECK == APPLICANTS AT DOMESTIC ABUSE OR SEXUAL  
33 3 ASSAULT CENTERS.

33 4 An applicant for employment at a domestic abuse or  
33 5 sexual assault center shall be subject to a national  
33 6 criminal history check through the federal bureau of  
33 7 investigation. The domestic abuse or sexual assault  
33 8 center shall request the criminal history check and  
33 9 shall provide the applicant's fingerprints to the  
33 10 department of public safety for submission through the  
33 11 state criminal history repository to the federal  
33 12 bureau of investigation. The applicant shall  
33 13 authorize release of the results of the criminal

33 14 history check to the domestic abuse or sexual assault  
33 15 center. The applicant shall pay the actual cost of  
33 16 the fingerprinting and criminal history check, if any.  
33 17 Unless the criminal history check was completed within  
33 18 the ninety calendar days prior to the date the  
33 19 application is received by the domestic abuse or  
33 20 sexual assault center, the center shall reject and  
33 21 return the application to the applicant. The results  
33 22 of a criminal history check conducted pursuant to this  
33 23 subsection shall not be considered a public record  
33 24 under chapter 22. For purposes of this section,  
33 25 "domestic abuse or sexual assault center" means a  
33 26 facility which is used to house victims of domestic  
33 27 abuse or sexual assault, and is owned, operated, or  
33 28 maintained by a nonprofit organization.

33 29 Sec. 58. NEW SECTION. 709.22 PREVENTION OF  
33 30 FURTHER SEXUAL ASSAULT == NOTIFICATION OF RIGHTS.

33 31 If a peace officer has reason to believe that a  
33 32 sexual assault as defined in section 915.40 has  
33 33 occurred, the officer shall use all reasonable means  
33 34 to prevent further violence including but not limited  
33 35 to the following:

33 36 1. If requested, remaining on the scene of the  
33 37 alleged sexual assault as long as there is a danger to  
33 38 the victim's physical safety without the presence of a  
33 39 peace officer, including but not limited to staying in  
33 40 the dwelling unit, or if unable to remain on the  
33 41 scene, assisting the victim in leaving the residence.

33 42 2. Assisting a victim in obtaining medical  
33 43 treatment necessitated by the sexual assault,  
33 44 including providing assistance to the victim in  
33 45 obtaining transportation to the emergency room of the  
33 46 nearest hospital.

33 47 3. Providing a victim with immediate and adequate  
33 48 notice of the victim's rights. The notice shall  
33 49 consist of handing the victim a copy of the following  
33 50 statement written in English and Spanish, asking the  
34 1 victim to read the statement, and asking whether the  
34 2 victim understands the rights:

34 3 "You have the right to ask the court for help with  
34 4 any of the following on a temporary basis:

34 5 a. Keeping your attacker away from you, your home,  
34 6 and your place of work.

34 7 b. The right to stay at your home without  
34 8 interference from your attacker.

34 9 c. The right to seek a no-contact order under  
34 10 section 709.20 or 915.22, if your attacker is arrested  
34 11 for sexual assault.

34 12 You have the right to register as a victim with the  
34 13 county attorney under section 915.12.

34 14 You have the right to file a complaint for threats,  
34 15 assaults, or other related crimes.

34 16 You have the right to seek restitution against your  
34 17 attacker for harm to you or your property.

34 18 You have the right to apply for victim  
34 19 compensation.

34 20 You have the right to contact the county attorney  
34 21 or local law enforcement to determine the status of  
34 22 your case.

34 23 If you are in need of medical treatment, you have  
34 24 the right to request that the officer present assist  
34 25 you in obtaining transportation to the nearest  
34 26 hospital or otherwise assist you.

34 27 You have the right to a sexual assault examination  
34 28 performed at state expense.

34 29 If you believe that police protection is needed for  
34 30 your physical safety, you have the right to request  
34 31 that the officer present remain at the scene until you  
34 32 and other affected parties can leave or until safety  
34 33 is otherwise ensured."

34 34 The notice shall also contain the telephone numbers  
34 35 of shelters, support groups, and crisis lines  
34 36 operating in the area.

34 37 Sec. 59. Section 915.10, subsections 1 and 2, Code  
34 38 2005, are amended to read as follows:

34 39 1. "Notification" means mailing by regular mail or  
34 40 providing for hand delivery of appropriate information  
34 41 or papers. However, this notification procedure does  
34 42 not prohibit an office, agency, or department from  
34 43 also providing appropriate information to a registered  
34 44 victim by telephone, electronic mail, or other means.

34 45 2. "Registered" means having provided the county  
34 46 attorney with the victim's written request for  
34 47 registration and current mailing address and telephone  
34 48 number. If an automated victim notification system is  
34 49 implemented pursuant to section 915.10A, "registered"  
34 50 also means having filed a request for registration

35 1 with the system.

35 2 Sec. 60. NEW SECTION. 915.10A AUTOMATED VICTIM  
35 3 NOTIFICATION SYSTEM.

35 4 1. An automated victim notification system may be  
35 5 utilized to assist public officials in informing crime  
35 6 victims, the victim's family, or other interested  
35 7 persons as provided in this subchapter and where  
35 8 otherwise specifically provided. The system shall  
35 9 disseminate the information to registered users  
35 10 through telephonic, electronic, or other means of  
35 11 access.

35 12 2. An office, agency, or department may satisfy a  
35 13 notification obligation to registered victims required  
35 14 by this subchapter through participation in the system  
35 15 to the extent information is available for  
35 16 dissemination through the system. Nothing in this  
35 17 section shall relieve a notification obligation under  
35 18 this subchapter due to the unavailability of  
35 19 information for dissemination through the system.

35 20 3. Notwithstanding section 232.147, information  
35 21 concerning juveniles charged with a felony offense  
35 22 shall be released to the extent necessary to comply  
35 23 with this section.

35 24 Sec. 61. Section 915.11, Code 2005, is amended to  
35 25 read as follows:

35 26 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

35 27 A local police department or county sheriff's  
35 28 department shall advise a victim of the right to  
35 29 register with the county attorney, and shall provide a  
35 30 request=for=registration form to each victim. If an  
35 31 automated victim notification system is available

35 32 pursuant to section 915.10A, a local police department

35 33 or county sheriff's department shall provide a

35 34 telephone number and website to each victim to

35 35 register with the system.

35 36 Sec. 62. Section 915.12, Code 2005, is amended to  
35 37 read as follows:

35 38 915.12 REGISTRATION.

35 39 ~~1. The county attorney shall be the sole registrar~~  
35 40 ~~of victims under this subchapter.~~

35 41 ~~2. 1. A victim may register by filing a written~~  
35 42 ~~request=for=registration form with the county~~  
35 43 ~~attorney. The county attorney shall notify the~~  
35 44 ~~victims in writing and advise them of their~~  
35 45 ~~registration and rights under this subchapter.~~

35 46 ~~3. The county attorney shall provide a registered~~  
35 47 ~~victim list to the offices, agencies, and departments~~  
35 48 ~~required to provide information under this subchapter~~  
35 49 ~~for notification purposes.~~

35 50 ~~2. If an automated victim notification system, the~~  
36 1 ~~victim's family, is available pursuant to section~~

36 2 ~~915.10A, a victim, the victim's family, or other~~

36 3 ~~interested person may register with the system by~~

36 4 ~~filing a request for registration through written,~~

36 5 ~~telephonic, or electronic means.~~

36 6 ~~4. 3. Notwithstanding chapter 22 or any other~~  
36 7 ~~contrary provision of law, a victim's the registration~~

36 8 ~~of a victim, victim's family, or other interested~~

36 9 ~~person shall be strictly maintained in a separate~~

36 10 ~~confidential file or other confidential medium, and~~

36 11 ~~shall be available only to the offices, agencies, and~~

36 12 ~~departments required to provide information under this~~

36 13 ~~subchapter.~~

36 14 Sec. 63. Section 915.29, Code 2005, is amended by  
36 15 adding the following new unnumbered paragraph:

36 16 NEW UNNUMBERED PARAGRAPH. The notification  
36 17 required pursuant to this section may occur through  
36 18 the automated victim notification system referred to  
36 19 in section 915.10A to the extent such information is  
36 20 available for dissemination through the system.

36 21 Sec. 64. Section 915.45, Code 2005, is amended by  
36 22 adding the following new unnumbered paragraph:

36 23 NEW UNNUMBERED PARAGRAPH. The notification

36 24 required pursuant to this section may occur through

36 25 the automated victim notification system referred to

36 26 in section 915.10A to the extent such information is  
36 27 available for dissemination through the system.

36 28 DIVISION VI  
36 29 TASK FORCE

36 30 Sec. 65. SEX OFFENDER TREATMENT AND SUPERVISION  
36 31 TASK FORCE.

36 32 1. The division of criminal and juvenile justice  
36 33 planning shall establish a task force to study and  
36 34 make periodic recommendations for treating and  
36 35 supervising sex offenders in correctional institutions  
36 36 and in the community. The task force shall file a  
36 37 report with recommendations with the general assembly  
36 38 by January 15, 2006. The task force shall study the  
36 39 effectiveness of electronic monitoring and the  
36 40 potential effects and costs associated with the  
36 41 special sentence created in this Act. The task force  
36 42 shall study risk assessment models created for sex  
36 43 offenders. The task force shall also review this  
36 44 state's efforts and the efforts of other states to  
36 45 implement treatment programs and make recommendations  
36 46 as to the best treatment options available for sex  
36 47 offenders. The task force shall also develop a plan  
36 48 to integrate state government databases for the  
36 49 purpose of updating addresses of persons on the sex  
36 50 offender registry.

37 1 2. Members of the task force shall include  
37 2 representatives of the following state agencies and  
37 3 organizations:

37 4 a. One representative of the department of human  
37 5 services.

37 6 b. One representative of the department of public  
37 7 safety.

37 8 c. One representative of the Iowa state sheriffs  
37 9 and deputies association.

37 10 d. One representative of the Iowa county attorneys  
37 11 association.

37 12 e. One representative of the department of  
37 13 corrections.

37 14 f. One representative of the board of parole.

37 15 g. One representative of a judicial district  
37 16 department of correctional services.

37 17 h. One representative of the department of  
37 18 justice.

37 19 i. One representative of the state public  
37 20 defender.

37 21 j. One representative of the Iowa coalition  
37 22 against sexual assault.

37 23 DIVISION VII  
37 24 STATE MANDATE

37 25 Sec. 66. IMPLEMENTATION OF ACT. Section 25B.2,  
37 26 subsection 3, shall not apply to this Act.>

37 27 #2. Title page, by striking lines 1 through 5 and  
37 28 inserting the following: <An Act relating to criminal  
37 29 sentencing, victim notification, and the sex offender  
37 30 registry, including making the death penalty  
37 31 applicable to certain class "A" felons, establishing a  
37 32 special sentence for certain offenders, requiring DNA  
37 33 testing of certain offenders, requiring sex offender  
37 34 treatment in order to accumulate earned time,  
37 35 establishing a sex offender treatment and supervision  
37 36 task force, providing penalties, and providing an  
37 37 effective date.>

37 38

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37 40

37 41 LARRY McKIBBEN

37 42

37 43

37 44

37 45 JEFF LAMBERTI

37 46

37 47

37 48

37 49 JERRY BEHN

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38 1

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38 3 JEFF ANGELO

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38 7 JAMES SEYMOUR  
38 8  
38 9  
38 10 \_\_\_\_\_  
38 11 PAUL MCKINLEY  
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38 14 \_\_\_\_\_  
38 15 JOHN PUTNEY  
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38 19 NANCY BOETTGER  
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38 23 RON WIECK  
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38 27 PAT WARD  
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38 30 \_\_\_\_\_  
38 31 BOB BRUNKHORST  
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38 35 STEVE KETTERING  
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38 38 \_\_\_\_\_  
38 39 JAMES HAHN  
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38 42 \_\_\_\_\_  
38 43 HUBERT M. HOUSER  
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38 47 STEWART IVERSON, Jr.  
38 48 HF 619.314 81  
38 49 jm/cf/2957